

REMARKS

First, the Notification states that "The Appeal Brief filed on 03/19/2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37". However, as the record verifies, 37 C.F.R. § 41.37 did not exist at the time Appellants' Supplemental Appeal Brief ("Brief") was filed. Rather Appellants' Brief was filed pursuant to 37 C.F.R. § 1.192, which were the applicable rules as of March 19, 2004.

The Office's "Clarification of the Effective Date Provision in the Rules of Practice before the Board of Patent Appeals and Interferences (Final Rule)" states: **"Appeal briefs filed prior to September 13, 2004 must either comply with former § 1.192 or new § 41.37."** Applicants' Brief was filed over five months prior to September 13, 2004 and specifically states on page 1, that, the Brief was filed pursuant to 37 C.F.R. § 1.192. Thus the reasons checked off in the Notification with respect to alleged defects in the Brief pursuant to 37 C.F.R. § 41.37 are improper and should be withdrawn.

Second, the alleged defects pursuant to 37 C.F.R. § 41.37 would not have been defects pursuant to 37 C.F.R. § 1.192. For example, 37 C.F.R. § 1.192. (c)(9) requires a single Appendix which contains a copy of the claims involved in the appeal. An "Evidence appendix" and a "Related proceedings appendix" such as specified under 37 C.F.R. § 41.37 (c)(ix) and 37 C.F.R. § 41.37(c)(x) respectively are not required pursuant to 37 C.F.R. § 1.192.

Third, the defects pointed out in the Notification do not exist in Appellants' Brief. For example, the Brief does not reference evidence entered by the Examiner." Thus there were no copies of such evidence to submit in an Evidence appendix of the Brief. Also the Brief does not reference any proceedings in the Related Appeals and Interferences section. Thus there were no

copies of the decisions rendered by a court or the Board to submit in a Related proceedings appendix of the Brief.

It follows that the Notification is without merit and should be withdrawn.

Reconsideration is respectfully requested. Appellants await an Examiner's Answer or a Notice of Allowance.

Respectfully submitted,



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